

HOUSE BILL REPORT

SSB 5546

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to the crime of human trafficking.

Brief Description: Concerning the crime of human trafficking.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kohl-Welles, Delvin, Chase, Pflug, Fraser, Keiser, Rockefeller, Regala, Kline, Holmquist Newbry, King, Shin, White, Stevens, Roach and Conway).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 3/16/11, 3/22/11 [DP].

Brief Summary of Substitute Bill

- Expands the definition of Trafficking in the second degree to include when a person "transfers" or "receives" by any means, another person, knowing that force, fraud, or coercion would be used to cause the victim to engage in forced labor or involuntary servitude, or a "commercial sex act."
- Expands the definition of Trafficking in the first degree to include when a person violates Trafficking in the second degree and his or her criminal act involves the illegal harvesting or sale of human organs.
- Defines "commercial sex act," "forced labor," "involuntary servitude," and "serious harm" for purposes of the Trafficking Act.
- Adds the offenses of human Trafficking in the first and second degree and Promoting Commercial Sexual Abuse of a Minor to the list of crimes for which a defendant is required to be automatically remanded into custody upon conviction pending sentencing.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 11 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Yvonne Walker (786-7841).

Background:

The Trafficking Act was enacted in 2003 by Substitute House Bill 1175 (Chapter 267, Laws of 2003).

Trafficking Defined. A person is guilty of Trafficking in the second degree, whether he or she benefitted financially or received anything of value, when the perpetrator recruits, harbors, transports, provides, or obtains by any means, another person, knowing that force, fraud, or coercion would be used to cause the victim to engage in forced labor or involuntary servitude. Trafficking in the second degree is a seriousness level XII, class A felony offense. The presumptive standard sentence range is 93 to 123 months for a person convicted of a seriousness level XII offense.

A person is guilty of Trafficking in the first degree if, in the process of violating Trafficking in the second degree, his or her criminal act results in a death, involves kidnapping or an attempt to commit kidnapping, or involves a finding of sexual motivation. Trafficking in the first degree is a seriousness level XIV, class A felony offense. The presumptive standard sentence range is 123 to 220 months for a person convicted of a seriousness level XIV offense.

Stay of Judgment. An appeal by a defendant in a criminal case does not stay the sentence unless the court finds by a preponderance of the evidence that the defendant is unlikely to flee or to pose a danger to the community. In addition, in order to grant a stay, the court must also find:

- that the delay resulting from the stay will not unduly diminish the deterrent effect of the punishment;
- that the stay will not cause unreasonable trauma to the victims of the crime; and
- that the defendant, to the extent of his or her financial ability, has undertaken to pay the financial obligations imposed by the judgment or has posted an adequate performance bond.

Defendants who are convicted of one of several offenses, such as specified sex offenses, must be detained following conviction while pending sentencing. In addition, if the defendant files an appeal of one of those convictions, the court may not stay execution of the judgment.

Summary of Bill:

Trafficking Defined. The elements of "Trafficking" in the second degree is expanded to include when a person "transfers" or "receives" by any means, another person, knowing that force, fraud, or coercion would be used to cause the victim to engage in forced labor or involuntary servitude, or a "commercial sex act."

The definition of "Trafficking" in the first degree is expanded to include when a person violates Trafficking in the second degree and his or her criminal act involves the illegal harvesting or sale of human organs.

A "commercial sex act" means any act of sexual contact or sexual intercourse for which something of value is given or received.

"Forced labor" means knowingly providing or obtaining labor or services of a person by: (1) threats of serious harm to, or physical restraint against, that person or another person; or (2) means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

"Involuntary servitude" means a condition of servitude in which the victim was forced to work by the use or threat of physical restraint or physical injury, or by the use of threat of coercion through law or legal process.

"Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or a commercial sex act in order to avoid incurring that harm.

Stay of Judgment. The offenses of human Trafficking in the first and second degree and Promoting Commercial Sexual Abuse of a Minor are added to the list of crimes for which a stay of judgment on appeal is not allowed.

The offenses of human Trafficking in the first and second degree and Promoting Commercial Sexual Abuse of a Minor are also added to the list of crimes for which a defendant is required to be automatically remanded into custody upon conviction pending sentencing.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There is a growing momentum to provide a layer of protection for victims and to look for opportunities to free people from the scourge of human trafficking. When the subject of human trafficking was introduced to the Legislature back in 2003, there was very little known about it. Although Washington seemed to be more prone to trafficking because of its proximity to Asia, Washington was the first state in the entire country to enact a law to

prohibit human trafficking. This bill strengthens the original law from 2003, clarifies the definitions, and adds organ harvesting as part of the Trafficking law.

It is highly recommended that this bill be passed with two recommendations. Commercial sex act as defined in this bill covers sexual contact and sexual intercourse. But in the federal code, as well as in other state's codes, the commercial sex act also includes forcing another person into stripping or performing where there is a recording. These acts are not sexual contact and would not be covered in the current version of the bill. Also, in instances where children are being forced into these situations, one should not have to prove the elements of force, fraud, or coercion which is required for elements of trafficking.

Even though the issue of trafficking has been worked on for about 10 years, this is the time to perfect the laws and take care of the perpetrators of these laws. There needs to be more tools for prosecuting Trafficking and this bill will provide everyone with a better tool.

(With concerns) There is no opposition to increasing the detection of and holding offenders that engage in trafficking appropriately accountable. However, there are some concerns about the bill in its current form, such as adding the words "transfers" or "receives" to the definition of trafficking. The other concerns surround the definitions of forced labor and involuntary servitude as well as adding the provisions relating to human organs to the elements of trafficking in the first degree. Also, if the committee decides to amend the definition of "commercial sex act" then all parties would like to be part of that amendment process.

(Opposed) None.

Persons Testifying: (In support) Senator Kohl-Welles, prime sponsor; Velma Veloria; Rose Gundersen, Washington Anti-Trafficking Engagement; and Tim Heffer and Dannie McQueen, The Justice and Mercy Foundation.

(With concerns) Kim Gordon, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.